

Remarks/Arguments

Applicants acknowledge receipt of the Office Action mailed October 20, 2004 and submit that this Amendment and Response is a reply to each rejection raised in the Office Action.

Currently, Claims 1-41, including independent Claims 1 and 24, are pending in the present application. Independent Claims 1 and 24 are amended by this Response and Amendment to clarify that the topical application is a separate layer from the boundary layer. Specifically, the topical application is a component of the overlayer and is not a component of the boundary layer which is a separate layer for the overlayer.

Amended independent Claim 1 is directed to a composite material that includes a substrate, a boundary layer that comprises a hydrocarbon emollient on a surface of the substrate, and an overlayer that comprises a topical application on the surface of the boundary layer opposite the substrate. Thus, the boundary layer and the overlayer in which the topical application is located are separate layers. Amended independent Claim 24 is directed to a method of making a composite material that includes providing a substrate, applying a boundary layer to the substrate and applying an overlayer that comprises a topical application to the boundary layer.

Applicants submit that the prior art fails to disclose, teach or suggest a boundary layer that comprises a hydrocarbon emollient and an overlayer that comprises a topical application and a substrate wherein the transfer forces necessary to separate the topical application from the boundary layer are lower than the transfer forces necessary to separate the substrate from the boundary layer. Applicants also submit that the prior art fails to disclose, teach or suggest a method of making a composite material that includes providing a substrate, applying a boundary layer that comprises a hydrocarbon emollient to the substrate and applying an overlayer that comprises a topical application to the boundary layer. Accordingly, Applicants respectfully request favorable reconsideration and allowance of the present patent application.

Support for the expression that the topical application, e.g. ointment or ointment containing petrolatum, is applied as an overlayer can be found on page 6, line 32 where it states that "the term "topical application" means an overlayer". Support for the expression that the topical application, e.g. ointment or ointment containing petrolatum, is applied as a separate layer also can be found on page 25, line 2-3 where it states that "a pre-treatment or boundary layer was added to the spunbond liner prior to the application of the *ointment or transfer layer*" (emphasis added). Further support can also be found in the examples, particularly, Examples 4 and 8.

Response to Rejections under 35 U.S.C. § 112, first paragraph

In paragraphs numbered 2-5 of the Office Action, Claims 1-41 were rejected under 35 U.S.C. § 112 first paragraph as containing new subject matter allegedly because there is not support for "boundary layer comprising hydrocarbon emollient". Applicants strongly disagree. Support for the boundary layer comprising, i.e. including, a hydrocarbon emollient can be found on page 14, lines 17-19 "Examples of boundary layer compounds which are suitable for use in the present invention include, but are not limited to, ...hydrocarbon emollients such as myristyl myristate (Cetiol 1414 E, made by Cognis Corporation)", and in Examples 4 and 8 "boundary layer of Cetiol 1414E" (page 27, line 22) and page 30, line 6).

Response to Rejections under 35 U.S.C. § 112, second paragraph

In paragraph numbered 6 of the Office Action, Claims 36-41 were rejected under 35 U.S.C. § 112 second paragraph as allegedly being indefinite by using the transitional phrases "comprising" and "consisting essentially of". Applicants strongly disagree. The transitional phrases "comprising" and "consisting essentially of" are commonly used and accepted (see MPEP § 2111.03). Furthermore, their meanings are well known and accepted (see MPEP § 2111.03). The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *>Invitrogen Corp. v. Biocrest Mfg., L.P.*, 327 F.3d 1364, 1368, 66 USPQ2d 1631, 1634 (Fed. Cir. 2003). The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976) (emphasis in original).

Response to Rejections under 35 U.S.C. § 112, second paragraph

In paragraph numbered 1-2 of the Office Action, Claim 17 was rejected under 35 U.S.C. § 112 second paragraph as allegedly being indefinite for using improper Markush format. Applicants disagree. The phrase "wherein the nonwoven web comprises a spunbond web, a meltblown web, a coformed web or a bonded carded web" used in Claim 17 is acceptable claim terminology and is similar to the alternative expression expressly approved in MPEP § 2173.05(h)(II) "Alternative expressions using "or" are acceptable, such as "wherein R is A, B, C, or D." However, Applicants are willing to amend Claim 17 to "The composite material of Claim 16, wherein the nonwoven web comprises a nonwoven web selected from the group consisting of a spunbond web, a meltblown web, a

coformed web or a bonded carded web." to facilitate allowance of the present patent application, if this is the only issue that remains.

Response to Rejections under 35 U.S.C. § 102

In paragraphs numbered 4-8 of the Office Action, Claims 1-13 and 15-35 were rejected under 35 U.S.C. § 102 as allegedly being anticipated by U.S. Patent No. 6,287,581 to Krzysik et al. (hereinafter Krzysik). Applicants strongly disagree with the rejection and the Examiner's interpretation of Krzysik. As previously stated, amended independent Claim 1 is directed to a composite material that includes (1) a substrate, (2) a boundary layer that comprises a hydrocarbon emollient on a surface of the substrate, and (3) an overlayer that comprises a topical application on the surface of the boundary layer opposite the substrate to clarify that the boundary layer and the topical application are in separate layers. Amended independent Claim 24 is directed to a method of making a composite material that includes (1) providing a substrate, (2) applying a boundary layer to the substrate and (3) applying an overlayer that comprises a topical application to the boundary layer to clarify that the boundary layer and the topical application are in separate layers.

Krzysik fails to disclose a substrate, a boundary layer that comprises a hydrocarbon emollient on a surface of a substrate and an overlayer comprising a topical application on the surface of the boundary layer that is opposite the substrate. In the present patent application, the boundary layer is a separate layer that is applied to a substrate so that a second layer comprising a topical application that is applied on top of the boundary layer may be readily separated from the substrate and boundary layer and subsequently transferred. Specifically, the transfer forces necessary to separate a topical application from the boundary layer are lower than the transfer forces necessary to separate the substrate from the boundary layer as presently claimed in Claim 1. The boundary layer is a layer that is separate from the topical application as illustrated in Figures 2, 4, 5 and 6 and enhances transfer efficiency of ingredients that are placed over the boundary layer such as the topical application. A boundary layer is not blended with the topical application as described in the cited references. The Examiner's interpretation that a mixture, blend or combination is the same as or equivalent to a separate layer is incorrect. Furthermore, a sidelinier is not a boundary layer and the Examiner's interpretation that a sidelinier is a boundary layer is incorrect.

Accordingly, Krzysik fails to disclose a boundary layer that is a separate layer from an overlayer that includes a topical application wherein the transfer forces necessary to separate a topical application from the boundary layer are lower than the transfer forces

necessary to separate the substrate from the boundary layer. Krzysik also fails to disclose a method of forming a composite material wherein a boundary layer is applied to a surface of a substrate and then a topical application is applied to the boundary layer. Thus, for at least the reasons set forth above, Applicants respectfully submit that the present claims are not anticipated by the above-cited reference.

Response to Rejections under 35 U.S.C. § 102

In paragraphs numbered 9-11 of the Office Action, Claims 1-13 and 15-35 were rejected under 35 U.S.C. § 102 as allegedly being anticipated by U.S. Patent No. 6,153,209 to Vega et al. (hereinafter Vega). Applicants strongly disagree with the rejection and the Examiner's interpretation of Vega. As previously stated, amended independent Claim 1 is directed to a composite material that includes (1) a substrate, (2) a boundary layer that comprises a hydrocarbon emollient on a surface of the substrate, and (3) an overlayer that comprises a topical application on the surface of the boundary layer opposite the substrate to clarify that the boundary layer and the topical application are in separate layers. Amended independent Claim 24 is directed to a method of making a composite material that includes (1) providing a substrate, (2) applying a boundary layer to the substrate and (3) applying an overlayer that comprises a topical application to the boundary layer to clarify that the boundary layer and the topical application are in separate layers.

Vega fails to disclose a boundary layer between an overlayer that comprises a skin care composition and a substrate. A topsheet is not a boundary layer. Not only does Vega fail to disclose a boundary layer between an overlayer topical application and a substrate, Vega fails to disclose a boundary layer wherein the transfer forces necessary to separate a topical application from the boundary layer are lower than the transfer forces necessary to separate the substrate. The absorbent core of Vega is not designed to facilitate the separation of a skin care composition from a substrate to which the skin care composition is applied. The topsheet in Vega could be a substrate of the present patent application. However, a substrate, a boundary layer on a surface of the substrate and an overlayer comprising a topical application on the surface of the boundary layer not in contact with the substrate are not disclosed, taught or suggested by Vega.

Specifically, Vega fails to disclose an overlayer that includes a topical application on the surface of a boundary layer on a surface of a substrate wherein the boundary layer comprises a hydrocarbon emollient. Vega also fails to disclose "a boundary layer that has a lower melt temperature than the substrate, whereby the boundary layer liquifies when exposed to a temperature of at least about 25°C" as presently claimed in Claims 3 and 29.

The topsheet that the Examiner alleges is a boundary layer and does not liquefy when exposed to a temperature of at least about 25°C. Topsheets are typically formed from polyolefins and do not melt at such temperatures.

For at least the reasons set forth above, Applicants respectfully submit that the present claims are not anticipated by the above-cited reference.

Claims 5 and 35 have been amended to specify that the substrate is a topsheet. Support for this amendment can be found on page 10, lines 28-32 "In the most desired embodiment, no surfactant will be added to or incorporated into the composite material of the present invention, however, in an alternative embodiment, the substrate or topsheet 36 of the diaper 26 may also be treated with a surfactant to promote wettability of the substrate, thereby promoting the wicking of moisture away from the surface of the user's skin and improved skin health conditions." Support can also be found on page 12, lines 16-17 "the boundary layer 18 is applied to the body-facing surface or topsheet 36".

Applicants respectfully submit that Krzysik and Vega, individually and in combination, fail to disclose, teach or suggest a composite material that includes (1) a substrate that is a topsheet, (2) a boundary layer that comprises a hydrocarbon emollient on a surface of the substrate, and (3) an overlayer that comprises a topical application on the surface of the boundary layer opposite the substrate to clarify that the boundary layer and the topical application are in separate layers. Applicants respectfully submit that Krzysik and Vega, individually and in combination, fail to disclose, teach or suggest a method of making a composite material that includes (1) providing a substrate that is a topsheet, (2) applying a boundary layer to the substrate and (3) applying an overlayer that comprises a topical application to the boundary layer to clarify that the boundary layer and the topical application are in separate layers.

Conclusion

Applicants respectfully submit that the present patent application and claims are in condition for allowance..

Should there be any outstanding matters that need to be resolved in the present application, Examiner Venkat is respectfully requested to contact the undersigned at telephone number (770) 587-8620 should any issues remain after consideration of this response.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc.
deposit account number 11-0875.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I, Christos S. Kyriakou, hereby certify that on February 22, 2005 this document is being
faxed to The United States Patent and Trademark Office, at 703-872-9306.

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